



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

November 2, 1960

Honorable Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. WW-955

Re: Disposition of fees
collected for water used
in measuring tanks or
containers of vehicles
transporting taxable motor
fuels.

Dear Mr. Calvert:

As your recent letter requesting our opinion upon the referenced question sets out certain pertinent facts and provisions bearing upon the situation, we quote it in full as follows:

"Article 9.19 of the Motor Fuel Tax Law - Chapter 9, House Bill 11, 3rd Called Session of the 56th Legislature, requires the Comptroller to test, measure and mark the correct capacity of every vehicle tank, and every compartment thereof, which is used in transporting taxable motor fuels, blending materials and other taxable liquid fuels in Texas. (The taxes are paid to the State on the capacities so determined and marked on said tanks.)

"The Bureau of Standards, U. S. Department of Commerce recommends the use of water as the most accurate medium of measuring the capacities of such vehicle tanks, and water is used in the State measuring racks or stations, eight (8) of which have been established and are in operation over the State. This Article - 19.19 (1) - carries the following provisions:

'The owner of any vehicle tank or other container tested and measured may be required to pay a reasonable fee to any city or any person for water used in the measurement of such tank or container.'

"Except at the measuring rack located on city property at Arlington, Texas, where the city collects for the water used directly from the vehicle tank owners, it has been necessary for the Comptroller's

rack supervisors to collect such water charges for the account of such cities and such collections have been turned over to the City Water Department for which receipts of payment have been secured. When the collections exceeded the amount due at the fixed rates per thousand gallons charged by most of the cities - which often happens when collections are made on fractions of a thousand gallons used - the excess funds were mailed in to the Austin Office and deposited by the Comptroller to the same funds to which motor fuel tax collections are allocated.

"The question has now arisen as to whether the Comptroller may be precluded by provisions of the Constitution or by the laws of this State from collecting funds for the account of the cities in payment of water used in such measuring operations without depositing the funds so collected in the State Treasury and remitting to the cities by State warrant for the payment of the water bills accruing.

"In the absence of any statutory allocation of such collections, the Comptroller could not be reimbursed for the payment of such water bills which obviously would have to be paid out of the Comptroller's appropriation for miscellaneous operating expense and contingencies.

"Our first two-fold question is therefore as follows:

"(a) Is the Comptroller required by law or Constitutional prescription to deposit in the State Treasury any funds collected by his employees as a water bill for the account of a city selling such water as above described? Or (b) may such employees act as an agency or collecting medium for such cities by collecting and paying over to them such water charges without channelling such payments through the State Treasury?

"If you should find that the Comptroller's actions in collecting water charges and paying such collections over to the cities is barred only by lack of statutory authority or sanction, will a rule and regulation authorizing such procedure promulgated under the power

specifically conferred upon the Comptroller by Article 9.19, above cited, validate such actions? For ready reference this provision reads as follows: 'The Comptroller is hereby given the power and authority to promulgate and enforce any rules and regulations, which he may deem necessary to the best enforcement of the provisions of this Article.'

We answer your first question as follows:

- (a) The Comptroller is not required by law or constitutional prescription to deposit in the State Treasury funds collected by his employees as a water bill for the account of a city selling such water, as described;
- (b) such employees may act as collectors for such cities by collecting and paying over to them such water charges without channelling such payments through the State Treasury.

It is obvious from the above quoted language of Art. 9.19 (1) of the Motor Fuel Tax Law, that the Legislature intended that the actual costs of water used in measuring vehicle tanks or other containers used to transport taxable liquid fuels should be paid by the owner of such tanks. The failure to provide specific machinery for so doing in no way changes the purpose of this provision. The fee paid under this Section by the owner of the tank or container measured is paid to the "City or other person" furnishing the water used in measurement. The phrase "or other person" obviously refers to any supplier of water other than a city. The fee provided does not belong to the State of Texas; the State as such can normally have no interest in it. The owner of the tank or container is responsible directly to the city (or other person) supplying the water for a fee. The only conceivable instance in which the State itself could have a claim upon the fee is in the event State-owned water was used in the measuring process. It would then become the "other person" supplying the water. In the situation you describe, however, no such question is presented.

From the facts you set out, it is apparent that the Comptroller's employees have been acting as de facto agents of the cities involved in collecting these fees. We assume that no compensation has been paid these employees by the cities for their services. We also understand from conferences with you that in each case a receipt is given the owner of the tank (or, more usually, the driver of the transport vehicle) indicating

the fee collected, at the time he is given his copy of the official measurement certificate. A receipt is then obtained from the city or other supplier when the fee is turned over to it. Copies of both receipts are then forwarded to your Austin Office.

The practicality of this method of collection is obvious when contrasted with the impracticality of requiring the vehicle driver to leave his truck at the measuring rack, which we understand is invariably located well away from the heart of each city, travel to the water department office, pay the required fee, then return to the measuring rack for his vehicle and measurement certificate. The only other alternative would be for the city itself to station its own employee at the rack to make such collections. Such an arrangement would of course eliminate any question of agency, but the city can certainly not be put under obligation to station an employee at this post.

It is obvious that any supplier could at any time refuse to make water available for measurement purposes, should the proper fee not be paid over to it. This would make it impossible to carry out the measurement process contemplated by Art. 9.19, Title 122-A, R.C.S., which is an integral part of the system of motor fuel taxation under Chapter 9 of Title 122-A. As you point out, Art. 9.19 empowers the Comptroller to promulgate any rule or regulation which may be necessary for enforcement of its provisions. It is our opinion that no statutory, Constitutional, or other impediment exists which would prevent such a rule or regulation permitting employees of that office to act as collecting agents for cities or other water suppliers, assuming, of course, the city or supplier designates him as agent for this purpose.

However, we are of the further opinion that all fees collected in this connection should be turned over to the city or other supplier of water, including any over-payments which occur. As pointed out above, the State of Texas has no claim whatsoever to any part of these fees; therefore, the deposit of any portion of them to the funds to which motor fuel tax collections are allocated, the General Fund, or any other State fund would be erroneous.


S U M M A R Y

Fees paid by or on behalf of owners of motor fuel tanks or containers for water used in measuring such tanks or containers, as provided in Art. 9.19, Title 122-A, R.C.S., should

not be deposited in the State Treasury.
Under a rule or regulation of the Comptroller
of Public Accounts, employees of that office
may act as Agents, when duly appointed, of
the City, or other supplier of water in
collecting and turning over such fees, without
channelling such payments through the State
Treasury.

Yours very truly,

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